

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CIVIL NO. 1:00CV32

H. DEAN ALLISON, <i>et al.</i>,)	
)	
Plaintiffs,)	
)	
This document pertains to:)	
FRANK E. SAUNDERS, and wife)	
MARIAN SAUNDERS,)	
)	
vs.)	<u>ORDER OF</u>
)	<u>DISMISSAL</u>
DANIEL CONSTRUCTION COMPANY,)	
INC., <i>et al.</i>,)	
)	
Defendants.)	
_____)	

THIS MATTER is before the Court *sua sponte* to dismiss this action as to the Plaintiffs Frank E. Saunders, and wife Marian Saunders, for failure to prosecute.

On July 8, 2008, the Court permitted Plaintiff's counsel to withdraw. **See Order, filed July 8, 2008.** In her motion to withdraw, Plaintiff's counsel advised the Court that Plaintiff Frank Saunders died on April 24, 2001, and his surviving spouse, Marian Saunders, was appointed personal representative of his estate. Plaintiff Marian Saunders died January 22, 2008, but since that time, no estate had been opened appointing a

personal representative to pursue this action. **See Motion to Withdraw as Counsel of Record, filed June 20, 2008, ¶¶ 2, 3.** Counsel also stated that Frank E. Saunders, Jr., and Tammy Baynes, son and stepdaughter of the Deceased Plaintiff Frank Saunders, were advised of the necessity for establishing an estate and the consequences of not doing so were explained. ***Id.* ¶ 3.** Although Frank Saunders, Jr., granted counsel permission to withdraw from this action, he did not file a formal response to the motion; the Court subsequently allowed counsel's request to withdraw. **See Order, *supra*.**

In the same Order, the Court directed Mr. Saunders, Jr., to take appropriate action to prosecute the claims filed herein and to do so within 30 days of entry of the Order. ***Id.* at 2.** To date, no response, either *pro se* or through counsel, has been received from Mr. Saunders. Therefore, the Court finds that the Plaintiffs, by the inaction of their surviving relatives, have abandoned their claims herein, failed to prosecute this action, and the claims should be summarily dismissed. **See Fed. R. Civ. P. 41(b) (providing that a dismissal for failure to prosecute “operates as an adjudication on the merits”); *Ballard v. Carlson*, 882 F.2d 93, 95 (4th**

Cir. 1989) (sanctioning dismissal under Rule 41(b) for failure to respond to a specific directive of the Court).

IT IS, THEREFORE, ORDERED that the claims of Frank E. Saunders, and wife Marian Saunders, against all Defendants herein are hereby **DISMISSED** in their entirety.

IT IS FURTHER ORDERED that the Clerk mail a copy of this Order to Mr. Frank E. Saunders, Jr., at the address of 1605 Beeson Road, Eden, North Carolina, 27288.

Signed: August 20, 2008

A handwritten signature in dark ink, appearing to read 'L. H. Thornburg', is written over a horizontal line.

Lacy H. Thornburg
United States District Judge

